United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union No. 1622 *and* Specialty Building Company. Case 32-CC-528

July 23, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On February 26, 1982, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union No. 1622, Haywood, California, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraph 1(c).

2. Substitute the attached notice for that of the Administrative Law Judge.

MEMBER JENKINS, dissenting:

For the reasons stated in my dissents in and since *Markwell and Hartz*,[3] I find that Respondent's picketing here is primary in nature and protected by the proviso to Section 8(b)(4)(B) of the Act. Accordingly, I would dismiss the complaint.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT engage in, or induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any articles, materials, or commodities, or to refuse to perform any other services, where an object thereof is to force or require that person to cease using, handling, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with Specialty Building Company or any other person.

WE WILL NOT threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or to require that person to cease doing business with Specialty Building Company or any other person.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, LOCAL UNION NO. 1622

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Oakland, California, on October 15 and 30, 1981. The charge was filed by Specialty Building Company, herein Specialty, on July 29, 1981. The complaint issued on August 7, and alleges that United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union No. 1622, herein Respondent, violated Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended, on and after July 23, 1981, by picketing gates at a construction site, which gates had been reserved for the sole use of neutral subcontractors, in furtherance of a dispute with Specialty, the general contractor.

I. JURISDICTION

Specialty, a proprietorship headquartered in Oakland, within the past year has taken delivery at the project in question, directly from outside California, of goods and materials valued in excess of $50,000.

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[1] The General Counsel filed a motion to consolidate this case with *Carpenters Union Local No. 1622, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Robert Wood & Associates, Inc.)*, 262 NLRB No. 138, issued today, which involves similar violations by the same Respondent. The General Counsel argued that Respondent's conduct in *Wood*, viewed together with the violations found herein, requires the issuance of a broad remedial order. However, we find it unnecessary to consolidate the two cases, as Respondent's actions in each case independently warrant the issuance of broad remedial orders.

[2] We shall delete par. 1(c) from the Administrative Law Judge's recommended Order, inasmuch as such a provision is inappropriate in a case involving a violation of Sec. 8(b)(4) of the Act.

[3] *Building and Construction Trades Council of New Orleans, AFL-CIO (Markwell and Hartz, Inc.)*, 155 NLRB 319 (1965). See also *Construction & General Laborers Union, Local 304, Laborers International Union of North America (Athejen Corporation)*, 260 NLRB 1311 (1982), and cases cited herein.

Specialty is a person within Section 2(1) of the Act and an employer within Section 2(2), engaged in and affecting commerce within the meaning of Section 2(6) and (7).

II. LABOR ORGANIZATION

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED MISCONDUCT

A. *Facts*

The project in question is the $3.5 million, 58-unit La Solana townhouse development in Hayward, California. Work began on October 13, 1980, and was underway at the time of the hearing. Specialty, the general contractor, is nonunion. It is performing carpentry, electrical, painting, and some concrete work. Subcontractors include Bettencourt Plumbing Company, Kynell Concrete Company, Eastbay Excavators, and Roberson Construction Company.[1]

The jobsite consists of two fenced enclosures, separated by a public thoroughfare known as Harvey Avenue. Sometime before June 8, 1981, Respondent began picketing the site with signs stating:

SPECIALTY BUILDERS
FAILS TO PAY CARPENTERS
WAGES & BENEFITS.

Conditions on this job are
below standards established
by Carpenters in this Area.

For information call 581-1421.

Specialty responded on June 8 by establishing two gates to each enclosure and installing signs stating "Union Gate" at one gate to each and "Non-Union Gate" at the other gates to each. The so-called union or neutral gates were and are numbered 2 and 4; the nonunion or primary gates, 1 and 3. Like gates were and are across Harvey Avenue from one another; opposites, about 100 feet down the road from each other.

On June 11, the original signs were supplanted by signs stating:

> Stop—Do Not Enter—This gate for Union Trades ONLY.
> Suppliers and Visitors Wait for Instructions.
>
> Stop—Do Not Enter—This gate for employees of Specialty Building Company ONLY—Suppliers and Visitors Wait for Instructions.

On June 25, these signs in turn were replaced by signs stating:

> Stop—Do Not Enter—This gate is reserved for the exclusive use of all contractors, subcontractors, their employees and suppliers, except Specialty Building Company, its employees and suppliers, who must use Gates 1 and 3. All others call 783-4899.
>
> Stop—Do Not Enter—This gate is reserved for the exclusive use of Specialty Building Company, its employees and suppliers, only. All others call 783-4899.

These last signs were amended as of 7 a.m. on July 23 to place Stanford Solar Systems, Inc., and Jita Drywall Company in the category with Specialty. There have been no changes in the signs since.

On July 22, in anticipation of the last sign change, Specialty's owner, Luckham, sent a mailgram to Respondent stating that "effective 7 AM, 7/23/81," Specialty was "re-establishing reserved gates." The mailgram also set forth the language to be on the signs, and concluded:

> Use of all gates is restricted as designated by the sign. In view of this notification of the reserved gates I ask that you terminate picketing of gates 2 and 4 immediately. Your picketing of this project has induced employees of neutrals to refuse to work on this project. If you contend that you have right to continue picketing at gates 2 and 4 I demand that you tell me why. If you picket at gates 2 or 4 after 7 AM on 7/23/81 charges will be filed with the National Labor Relations Board.

On July 22, as well, Specialty's job foreman, Richard Steckler, attempted to hand a leaflet, with a message identical to that in the mailgram, to one of the picketers. The picketer, seated in a car, declined to accept it, whereupon Steckler placed it beneath the car's windshield wiper.

Starting July 23, Steckler was assigned full time to police the gate system. The neutral gates remained locked except when opened by him or John Dorrian, job superintendent, to permit a specific entry or exit. The primary gates, which received much greater use, were kept closed but not locked when not in use.

Respondent's picketing nevertheless continued, without regard for gates or signs, from its onset until legally enjoined on August 20.

There is evidence of perhaps eight incidents, before July 23, in which the integrity of the gate system arguably was violated. There is no evidence of such incidents on or after July 23.[2]

Specialty, as the general contractor, exercises project oversight involving some measure of control over the subcontractors. It passes on the acceptability of their work, orchestrates the timing of their performances, mediates conflicts between them, and things of that sort. Specialty, in addition, arranges and pays for the supply-

[1] Each of which is a "person engaged in commerce or in an industry affecting commerce" for purposes of Sec. 8(b)(4)(i) and (ii)(B).

[2] Since July 23, a person has come on the site once a week, through the neutral gates, to service the portable toilets, which are for the use of everyone on the project. This happens in the early morning hours, before the day's project work begins. Although this service was arranged and is paid for by Specialty, it is deemed not to be a cognizable breach of the system. See *Local 18, International Union of Operating Engineers (Dodge-Ireland, Inc.)*, 236 NLRB 199, 204 (1978).

ing of certain equipment and services to the project, for the use and benefit of all—water, electricity, telephones, toilets, security fences, liability insurance (but not workmen's compensation), scaffolding, forklifts, some cleanup, etc. Luckham credibly testified that Specialty's relationship with the subcontractors in these respects "is relatively conventional" in the construction industry.

B. *Conclusion*

It is concluded that an object of all of Respondent's picketing on and after July 23 was the improper one of enmeshing the neutral subcontractors in a dispute not their own, and that this conduct therefore violated Section 8(b)(4)(i) and (ii)(B). The proscribed object—a subjective determination—is inferable from the picketing of the neutral gates on and after July 23, and there is no reason to suppose that the same state of mind did not carry over to the picketing of the primary gates. See *Local Union 323 International Brotherhood of Electrical Workers (J. F. Hoff Electric Co.)*, 241 NLRB 694, 697 (1979); *Local Freight Drivers Local No. 208, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (DeAnza Delivery System, Inc.)*, 224 NLRB 1116, 1119 (1976); *General Teamster, Warehouse and Dairy Employees Union Local 126, IBT (Ready Mixed Concrete, Inc.)*, 200 NLRB 253, 254–255 (1972).

Respondent's contention is rejected that "pollution of the reserved gates prior to July 23 justifies . . . continued picketing." Assuming without deciding that pollution of the gates before July 23 was sufficient to justify indiscriminate picketing until then,[3] Specialty effectively rehabilitated the gate system by the July 22 mailgram to Respondent, by the tender to the picketer of a corresponding leaflet on July 22, and by subsequent policing which apparently prevented further pollution. As the Board observed in *Carpenters Local 470 (Mueller-Anderson, Inc.)*, 224 NLRB 315, 316 (1976):

> [I]f a reserved gate system initially breaks down, an employer should be allowed to establish a revised reserve gate system and still be protected from secondary picketing so long as the revised system is honored and the labor organization involved is notified of the revision.

Also rejected is Respondent's argument that the gate signs on and after July 23 (actually, June 25) were inadequate because of their "failure to identify precisely where visitors . . . were to enter or leave." The signs instructed those not specified—"all others"—to call a certain telephone number, and there is no indication that the nonmention of visitors caused any confusion on and after July 23. *Plumbers Local 48 (Calvert General Contractors), supra* at 249 NLRB 1186; *International Association of Bridge, Structural and Ornamental Ironworkers, Local No. 433, AFL-CIO (Robert E. McKee, Inc.)*, 233 NLRB 283, 287 (1977).

Rejected, as well, is Respondent's contention that, since Specialty arranges and pays for the supplying of certain equipment and services to the project in general, and thus to the neutral subcontractors, the signs at the neutral gates "mandated the use of those gates by [its] employees," thereby licensing Respondent "to attempt to interdict efforts to supply the neutral employers by Specialty." This ignores not only the text of the signs at the neutral gates, which expressly exclude Specialty from use of those gates, but the reality that none of the equipment and services arranged for by Specialty— except for the once-a-week visit by the toilet man—entailed use of the neutral gates on or after July 23. Respondent's reliance upon *Electrical Workers Local 323 (J. F. Hoff Electric Co.), supra*, and *Int'l Union of Operating Engineers, Local Union No. 450, AFL-CIO (Linbeck Construction Corporation)*, 219 NLRB 997 (1975), is misplaced. As those decisions clearly reveal, "any gate used to deliver materials essential to the primary employer's normal operations"—as opposed to the neutral gates in the present case on and after July 23—"is subject to lawful picketing." *J. F. Hoff Electric Co.*, 241 NLRB at 694, fn. 1.

Rejected, finally, is Respondent's argument that Specialty's relationship with its subcontractors warrants application of the "related-work" doctrine, as enunciated in *United Steelworkers of America [Carrier Corporation]* v. *N.L.R.B.*, 376 U.S. 492 (1964), and *Local 761, International Union of Electrical, Radio & Machine Workers, AFL-CIO [General Electric Company]* v. *N.L.R.B.*, 366 U.S. 667 (1961), enabling lawful picketing of one and all. The Board time and again has declined to apply the related-work doctrine to situations, such as the present, involving common situs picketing in the construction industry. E.g., *Sacramento Area District Council of Carpenters (Malek Construction Co.)*, 244 NLRB 890 (1979); *Carpenters District Council of Local 470 (Mueller-Anderson, Inc.), supra; Building and Construction Trades Council of New Orleans (Markwell and Hartz, Inc.)*, 155 NLRB 319 (1965). Moreover, the Supreme Court stated in *N.L.R.B.* v. *Denver Building & Construction Trades Council [Gould & Preisner]*, 341 U.S. 675, 689–690 (1951):

> [T]he fact that the contractor and subcontractor were engaged on the same construction project, and that the contractor had some supervision over the subcontractor's work, did not eliminate the status of each as an independent contractor or make the employees of one the employees of the other. The business relationship between independent contractors is too well established in the law to be overridden without clear language doing so.

CONCLUSION OF LAW

By picketing the La Solana townhouse development on and after July 23, 1981, with an object of forcing neutral subcontractors to cease doing business with Specialty, as found herein, Respondent has engaged in an unfair labor practice within Section 8(b)(4)(i) and (ii)(B) of the Act.

[3] Given the limited extent of pollution before July 23, this assumption is of questionable validity. Extracting from *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local 48 (Calvert General Contractors)*, 249 NLRB 1183, fn. 2 (1980), "isolated occurrences" not establishing "a pattern of destruction of the reserve gate system" do not justify picketing at the neutral gates. See also *Local 18, Operating Engineers (Dodge-Ireland, Inc.), supra*, 236 NLRB 199 at fn. 1.

THE REMEDY

The General Counsel seeks a broad remedial order, citing these circumstances:

(a) On August 22 and 28 and September 10, 1980, the General Counsel issued complaints against Respondent alleging picketing at three separate jobsites in violation of Section 8(b)(4)(i) and (ii)(B).

(b) On April 14, 1981, Respondent entered into a settlement stipulation in which it agreed to the entry of an order that it cease and desist from further engagement in the picketing alleged in the three complaints to be unlawful. The stipulation provides that it

> . . . may be considered as though it were an adjudicated determination of the Board, enforced by an appropriate United States Court of Appeals, that Respondent has engaged in the conduct alleged in the Complaints . . . .

(c) On July 6, 1981, the Board issued its Decision and Order approving the settlement stipulation.

(d) On October 6, 1981, the United States Court of Appeals for the 9th Circuit entered its judgment enforcing the Board's order.

It is concluded that Respondent, by its present picketing misconduct in combination with that which was the subject of the settlement stipulation, Board order, and court judgment, has shown a proclivity to violate the Act, and that a broad order therefore is warranted. Cf. *Tri-State Building and Construction Trades Council (Structures, Inc.)*, 257 NLRB 295, fn. 1 (1981).[4]

ORDER[5]

The Respondent, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union No. 1622, Haywood, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in or inducing or encouraging any individual employed by any person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of his employment, to use, manufacture, process, transport, or otherwise handle or work on any articles, materials, or commodities, or to refuse to perform any other services where an object thereof is to force or require that person to cease using, handling, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with Specialty Building Company or any other person.

(b) Threatening, coercing, or restraining any person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or to require that person to cease doing business with Specialty Building Company or any other person.

(c) Engaging in any like or related unfair labor practices.

2. Take this affirmative action:

(a) Post at its offices and meeting halls copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members customarily are posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the notice to the Regional Director for Region 32 for posting by Specialty Building Company and its subcontractors on the La Solana project, should they wish to do so, at all locations where notices to employees customarily are posted.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[4] The General Counsel also notes the Decision of Administrative Law Judge Burton Litvack, dated October 26, 1981, in which it is concluded that Respondent's picketing at yet another jobsite violated Sec. 8(b)(4)(i) and (ii)(B). *Carpenters Local 1622 (Robert Wood & Associates, Inc.)*, 262 NLRB 1211 (1982). The General Counsel concedes that this Decision cannot support a broad order unless and until affirmed by the Board, a development yet to materialize.

[5] All outstanding motions inconsistent with this Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."